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No. 86-335

In The
Supreme Court of the United States
October Term, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST in Boston, Massachusetts, a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased, and RUTH L. TANNER

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

CHURCH'S RESPONSE IN OPPOSITION

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SUMMARY OF ARGUMENT

Petitioner's common law claim for wrongful death was dismissed on the pleadings by the Illinois courts. It alleges that the Christian Science church is liable for malpractice (medical or religious) for spiritually treating the plaintiff's decedent instead of deferring to medical care. While freedom of religion is a consideration justifying Illinois' refusal to recognize this cause of action, this case does not have a significant constitutional dimension. The decedent was a competent adult who

freely pursued Christian Science spiritual treatment for his illness. Indeed, because of the posture of the case, the record does not even permit a fair and full consideration of what Christian Science actually involves.

This Court has consistently held that the tenets of a religion and the beliefs of its followers are not subject to judicial scrutiny. The decisions in this case do not conflict with prior decisions of this Court and there is no need for the Court to use this case as a means for issuing further guidance in this area.

REASONS FOR DENYING THE PETITION

I. The Nature of the Case.

By its very nature this case is ill-suited for review by this Court.

John Baumgartner was a life long Christian Scientist. At the time of his death, he was receiving Christian Science treatment for prostatitis. His widow now alleges he could have been cured if he had pursued medical care instead.

Plaintiff's wrongful death case was dismissed by the Illinois courts, and the case arises on the pleadings. Although the allegations erroneously describe the Church's organization and practices, and the events at issue, the Church has had no opportunity to respond factually - - in particular to clarify what Christian Science actually involves. However, the Illinois appellate court did dismiss the complaint's conclusions as to "coercion" and "intimidation," and the case comes to this Court simply as a claim for medical malpractice or spiritual malpractice.

Because John Baumgartner was a competent adult who chose Christian Science treatment as a matter of his own free will, the Illinois courts declined to recognize a cause of action. This case concerns nothing more than the established right of a competent adult to forego medical treatment when it conflicts

with his religious beliefs. *In re Estate of Brooks* (1965), 32 111.2d 361, 205 N.E.2d 435.

The posture of the case does not permit the Court to address accurately the doctrines of Christian Science (which petitioner acknowledges to be a very wide-spread and well established religion). Since John Baumgartner was a competent adult, the facts do not even raise the interplay among religion, health care, and infants (or other incompetents).

II. The Law Does Not Need to Be Settled.

The case does not give rise to any novel issues that merit this Court's attention.

A. Existing Law Provides Ample Guidelines.

Both the trial court and the appellate court experienced little difficulty in disposing of this case. The Illinois Supreme Court even declined to consider an appeal from the lower appellate court. The clarity and consistency of this Court's past decisions gave ample guidelines.

In *United States v. Ballard*, 322 U.S. 78, 86 (1944), this Court wrote that the First Amendment "embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of orthodox faiths . . . " and that "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs." Later, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) this Court held that the First and Fourteenth Amendments precluded a civil court's inquiry into a religious organization's rules, regulations, and machinery to determine if the conduct of its governing body was legal. Finally, in *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981) this Court firmly held to its position that the resolution of what is a religious belief does not turn upon a judicial perception of that particular belief or practice in question. Religious beliefs, the Court explained, need not be acceptable, logical, consistent, or comprehensive to others in order to merit First Amendment protection.

B. This Court's Guidance Has Allowed Lower Courts to Decide Similar Issues.

The guidelines laid out above have, on more than one occasion, allowed lower courts to decide similar issues. Because the lower courts have experienced little difficulty with these guidelines this Court need not expand upon the topic in order to assist the lower courts.

In *Founding Church of Scientology of Washington v. U.S.*, 409 F.2d 1146 (D.C. Cir.) *cert. denied*, 396 U.S. 963 (1969), the circuit court held, on the basis of *Ballard,* that literature setting forth religious doctrines, and related to an instrument used in "auditing" or treating religious adherents, could not be subjected to courtroom evaluation and therefore could not be considered false or misleading labeling. Because the literature could not be deemed false or misleading without an inquiry into the tenets of the religion, *Ballard,* precluded the evaluation of the literature.

Similarly, because the claim of medical malpractice cannot be evaluated without an analysis of the veracity of the doctrine of spiritual healing, *Ballard* obviously forecloses petitioner's action.

In *Pfeifer v. Christian Science Committee on Publications,* 31 Ill.App.3d 845, 334 N.E.2d 876 (1st Dist. 1975), an Illinois appellate court held, on the basis of this Court's decision in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969), that it lacked jurisdiction to make factual determinations as to whether particular teachings were in conformity with those of the founder of the Church. Because the suit could not be resolved without such an inquiry, the case was dismissed.

C. The First Amendment is Not Crucial to the Case

Because the ultimate question is whether Illinois common law should recognize a claim for medical malpractice or spiritual malpractice on the facts of this case, the petitioner's

claims may be dismissed without invoking the protection of the First Amendment.

Illinois has expressly declined to impose the duty of *medical* care upon *religious* healers. The Illinois legislature has exempted religious treatment from licensing, testing, and other regulation under the Medical Practice Act. Ill. Rev. Stat. 1983, ch. 111, par. 4474. Specifically, the statute exempts "persons treating human ailments by prayer or spiritual means as an exercise of religious freedom." The distinction drawn by the Act recognizes the fundamental difference between spiritual and medical treatment of human ailments. Illinois has decided that persons who are exempt as a matter of public policy from the statutory framework which sets up standards for the medical profession may not be held liable for failing to comply with medical standards.

Petitioner's claim of Christian Science malpractice may also be dismissed without the aid of the First Amendment. Petitioner alleges a wrongful deviation from Article VIII, par. 23 of the Manual of The Mother Church which provides that "[i]f a member of this Church has a patient whom he does not heal, and whose case he cannot fully diagnose, he may consult with an M.D. on the anatomy involved." The appellate court recognized the problems inherent in a civil court trying to ascertain precisely what such church principles might mean. On its face the rule is quite permissive, but is it prudent for lay people to make such religious determinations? Even if the First Amendment did not automatically prohibit such judicial inquiry, Illinois has recognized that the courts "do not aspire to become *de facto* heads of the Church," *Chase v. Cheney* (1871) 58 Ill. 509, 535.

D. This Case Presents No Socially Significant Question of Law

The issues involved in this case present no need for further social regulation. Where a competent, knowing individual requests a particular religious treatment, the state and the courts should not interfere. Although petitioner cites cases

from California, Michigan, and Indiana as questioning the need for increased governmental regulation of religious treatment, those cases are easily distinguished. The issue in each one of the cited cases was whether or not parents who, based on *their own* religious beliefs, neglected to seek medical aid for their minor children should be liable for the death or injury of their children. Here, in sharp contrast, an entirely competent adult chose to follow *his own* beliefs and requested Christian Science treatment for himself.

III. This Case Presents No Conflict In The Law.

This Court has consistently held that a civil court may not look behind or examine the beliefs of a particular religion. The decisions in *Prince v. Massachusetts*, 321 U.S. 158 (1944), *Cox v. New Hampshire*, 312 U.S. 569 (1941) and *Reynolds v. United States*, 98 U.S. (8 Otto) 145 (1878) established the clearly distinct principle that the practices of a religion may be regulated when such practices can be analyzed without first evaluating the tenets of that religion or the beliefs of its followers.

The present case is not in conflict with these decisions, since the conduct complained of - - the rendering of Christian Science healing - - cannot be analyzed without first adjudicating the veracity of the beliefs of the Christian Science Church. The decisions of the lower courts in the present case are therefore not in conflict with this Court's prior decisions.

CONCLUSION.

The petition for a writ of certiorari should be denied because the nature of this case does not warrant the attention of this Court, there is no need for new law and the dismissal below is in harmony with existing law.

Respectfully Submitted,

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